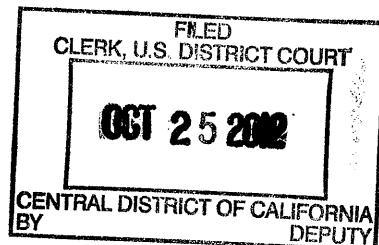


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ALLYSON NICHOLE BURNETT

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

ALLYSON NICHOLE BURNETT

Plaintiff,

v.

ADAM YOUNG D/B/A OWL
CITY, MATT THIESSEN, BRIAN
LEE, UNIVERSAL MUSIC
GROUP, INC., SONGS MUSIC
PUBLISHING, LLC, CARLY RAE
JEPSEN, SCHOOLBOY
RECORDS, LLC, AMERICAN
SOCIETY OF COMPOSERS,
AUTHORS AND PUBLISHERS,
BROADCAST MUSIC, INC., and
SESAC, INC.

Defendants.

CASH NO CV12-09203 DSF(VBKX)

COMPLAINT

DEMAND FOR JURY TRIAL

1 Plaintiff Allyson Nichole Burnett (“Burnett”), demanding a trial by jury,
 2 complains and alleges as follows against Defendants Adam Young d/b/a Owl City,
 3 Matt Thiessen, Brian Lee, Universal Music Group Inc. (“Universal”), Songs Music
 4 Publishing, LLC (“Songs”), Carly Rae Jepsen, and Schoolboy Records, Inc.
 5 (“Schoolboy”) (collectively “Defendants”); and American Society of Composers,
 6 Authors and Publishers (“ASCAP”), Broadcast Music, Inc. (“BMI”), and SESAC,
 7 Inc. (“SESAC”) (collectively “Royalty Distributors”):

8 **I.**

9 **JURISDICTION AND VENUE**

10 1. Plaintiff’s Claim for Relief arises under the Copyright Laws of the
 11 United States, as amended (17 U.S.C. § et seq.). This Court has subject matter
 12 jurisdiction over this claim pursuant to 28 U.S.C. §§ 1338 and 1331.

13 2. Venue is proper in this district under 28 U.S.C. §§ 1391(b)(2) because
 14 Defendants have committed acts of infringement in this judicial district, do
 15 substantial business in the judicial district, have registered agents in this judicial
 16 district, and Defendant Universal resides in this district.

17 3. In particular, on information and belief, Defendants carry out
 18 substantial, ongoing business activities within this judicial district, and a substantial
 19 part of the Defendants’ acts and omissions, in exploiting the musical composition
 20 that gave rise to Plaintiff’s claims for copyright infringement, occurred in the
 21 Central District of California.

22 4. On information and belief, each of the Defendants sued herein is the
 23 agent, servant, and employee of each other, and of the other Defendants, and by
 24 acting as herein alleged, acted within the course and scope of said agency and
 25 employment, and with the full knowledge and consent of the remaining Defendants.

26 //

27 //

II.

THE PARTIES

Plaintiff

5. Plaintiff Burnett (“Plaintiff” or “Burnett”) is a pop and rock singer and songwriter who resides in Huntsville, Alabama. Plaintiff is the legal owner of the copyright for the song “AH, It’s a Love Song” on her album *The Takeover*, which is registered with the United States Copyright Office (SR0000664830) with a registration date of October 19, 2010. A true and correct copy of Plaintiff’s Certificate of Registration is attached hereto as Exhibit 1.

Defendants

6. Plaintiff is informed and believes, and thereon alleges, that Defendant Adam Young is a pop singer and songwriter who resides in Owatonna, Minnesota. On information and belief, Young has marketed, distributed, and otherwise exploited the Infringing Song (as defined herein) in California for his commercial benefit.

7. Plaintiff is informed and believes, and thereon alleges, that Defendant Matt Thiessen is a pop singer and songwriter who, upon information and belief, resides in Nashville, Tennessee. On information and belief, Thiessen has marketed, distributed, and otherwise exploited the Infringing Song in California for his commercial benefit.

8. Plaintiff is informed and believes, and thereon alleges, that Defendant Brian Lee is a songwriter who, upon information and belief, resides in the United States and may be served wherever he may be found. On information and belief, Lee has marketed, distributed, and otherwise exploited the Infringing Song in California for his commercial benefit.

9. Plaintiff is informed and believes, and thereon alleges, that Defendant Carly Rae Jepsen is a pop singer who, upon information and belief, resides in Mission, British Columbia, Canada. On information and belief, Jepsen has

1 marketed, distributed, and otherwise exploited the Infringing Song in California for
2 her commercial benefit.

3 10. Plaintiff is informed and believes, and thereon alleges, that Defendant
4 Universal Music Group, Inc. is a Delaware corporation with its principal place of
5 business located at 2220 Colorado Avenue, Santa Monica, California 90404.
6 Universal may be served with a copy of the summons and complaint in this action
7 at the office of its California registered agent, CT Corporation System, located at
8 818 W. Seventh Street, Los Angeles, California 90017. On information and belief,
9 Universal has marketed, distributed, and otherwise exploited the Infringing Song in
10 California for its commercial benefit.

11 11. Plaintiff is informed and believes, and thereon alleges, that Defendant
12 Schoolboy Records, LLC is a Delaware corporation with its principal place of
13 business in New York, New York. Schoolboy may be served with a copy of the
14 summons and complaint in this action at the office of its Delaware registered agent,
15 Eresidentagent, Inc., located at 28 Old Rudnick Lane, Dover, Delaware 19901. On
16 information and belief, Schoolboy has marketed, distributed, and otherwise
17 exploited the Infringing Song in California for its commercial benefit.

18 12. Plaintiff is informed and believes, and thereon alleges, that Defendant
19 Songs Music Publishing, LLC is a Delaware corporation with its principal place of
20 business located at 307 7th Avenue, Suite 2104, New York, New York 10001.
21 Songs may be served with a copy of the summons and complaint in this action at
22 the office of its California registered agent, 7024 Melrose Avenue, Suite 450, Los
23 Angeles, California 90038. On information and belief, Song has marketed,
24 distributed, and otherwise exploited the Infringing Song in California for its
25 commercial benefit.

26 13. Plaintiff is informed and believes, and thereon alleges, that Defendant
27 American Society of Composers, Authors and Publishers is an unincorporated,
28 voluntary membership association organized and existing under the laws of the

State of New York, with its principal office at One Lincoln Plaza, New York, New York, 10023, and may be served wherever it may be found.

14. Plaintiff is informed and believes, and thereon alleges, that Defendant Broadcast Music, Inc. is a New York corporation with its principal place of business located at 10 Music Square East, Nashville, Tennessee 37203. BMI may be served with a copy of the summons and complaint in this action at the office of its California registered agent, CSC-Lawyers Incorporating Service, located at 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833.

15. Plaintiff is informed and believes, and thereon alleges, that Defendant SESAC, Inc. is a New York corporation with its principal place of business located at 55 Music Square East, Nashville, Tennessee 37203. SESAC may be served with a copy of the summons and complaint in this action at the office of its New York registered agent, Corporation Service Company, located at 80 State Street, Albany, New York 12207.

III.

ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

16. Plaintiff owns the copyright in the infringed work Love Song (as defined herein).

17. Within three years of the date this Complaint is filed, Defendants caused to be marketed and/or distributed the infringing work to the public. On information and belief, the infringing work has been an enormous commercial success.

Burnett's Song

18. Burnett started singing when she was four years old, and she has been pursuing her dream of being a singer and songwriter ever since. Burnett writes from the heart and many of her songs are borne from her personal experiences.

19. Before breaking off as a solo artist in 2009, Burnett fronted power-pop groups such as Atlanta based band The Soundtrack. Her first solo release, under

1 the pseudonym “Ally Cupcake,” was her 2009 EP titled *Talk of the Town*, which
 2 was produced by former A Day to Remember band member Tom Denney. After
 3 writing and performing under the name Ally Cupcake for several years, she
 4 dropped the “Cupcake” and started using solely her real last name in approximately
 5 September 2010.

6 20. In December of 2009, Burnett wrote the lyrics and created the melody,
 7 harmony, and rhythm for one of her most popular songs, “AH, It’s A Love Song”
 8 (“Love Song” or the “Infringed Song”). The “AH” in the song title are the initials
 9 of the person who inspired the song. A demonstration (or “demo”) version of Love
 10 Song was initially recorded on a friend’s laptop in December 2009.

11 21. Love Song opens with a few pick-up beats immediately followed by
 12 the song’s hook. The hook is dominated by a unique vocal motif originally created
 13 and sung by Burnett in December 2009 (“the Original Motif”). The Original Motif
 14 is repeated throughout Love Song and has a catchy pop vibe that both draws people
 15 in and sticks in people’s heads.

16 22. One author defines “motive (motif)” as follows:

17 Motive is a terse musical idea, usually announced at the beginning of
 18 a musical work. It has been refined even more by Schoenberg, who
 19 called it the “germ’ of the idea.” It is a short, easily identifiable
 20 sequence of notes/pitches repeated throughout a work, and conveys a
 21 rhythmic, melodic or harmonic idea, or a combination containing two
 22 or all three of these elements. It is memorable and is repeated
 23 throughout a piece, usually varied or developed to avoid monotony.
 As the germ of the idea it is a force driving forward movement in
 larger forms, including symphonies, concertos, overtures, and opera.
 A motive usually carries within it a brief statement of three to eight
 notes with the potential for extensive and creative variation and
 development.

24 Ronald S. Rosen, Music and Copyright, 157-58 (2008).

25 23. In general, a hook is a musical idea, often a short riff, passage, or
 26 phrase, that is used in popular music to make a song appealing and to catch the ear

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1 of the listener. A hook can often be either melodic or rhythmic, and frequently
 2 incorporates the main motif or theme for a piece of music. One author defines
 3 “hook” as follows:

4 The “hook” is what makes the song particularly appealing to the
 5 listener. It is usually a part of a song that is repeated, that contains
 6 memorable melody, rhythm or lyric, and that stays in the listener’s
 7 mind. For those who listen to pop music, the refrain Steve Wonder
 8 sings – “I just called to say I love you” – is the “hook” you cannot get
 9 it out of your mind after hearing it. For the classical buff, the
 Schubert *Lied, Die Post*, with constant reminder at the end of each
 verse “*mein herz, mein herz*” (“my heart, my heart”), may be the
 ultimate hook for the love-sick. But perhaps the most ubiquitous
 “hook” appears not in a song, but in Beethoven’s Fifth Symphony: the
 famous three dots and a dash are repeated dozens of times.

10 Ronald S. Rosen, Music and Copyright, 244 n.74 (2008).

11 24. More practically, the term “hook” is applicable to that portion of the
 12 song that literally “hooks” the listener and invites them to listen further. Often, the
 13 “hook” of a song is found in the first few measures, as it is in both Love Song and
 14 Good Time. Equally often, the “hook” is additionally or alternately an integral part
 15 of a song’s “chorus.” The chorus is the recurring refrain that is interspersed
 16 throughout a song, in between the verses and other structural sections (such as the
 17 “bridge”), and that often contains the songs key lyrics.

18 25. Love Song’s complete “hook” is four measures in length, which is
 19 repeated to create an eight-measure section. The “hook” in its entirety appears
 20 twice in the song. The first and third measures of the “hook,” found initially in
 21 measure 1 and 3, present a motive that is one of the main musical building blocks
 22 of the song. This motive utilizes the pitch sequence, C-A-C-A-G, or scale degrees
 23 5-3-5-3-2 in the key of F major. Beyond the two instances of the actual “hook,” the
 24 basic “cell” of pitches used in this sequence, 5-3-2, is found prominently
 25 throughout the piece, including in the chorus, second verse, and bridge. The
 26 underlying rhythm of the original motive is also seen utilized separately from the
 27 //

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1 pitches. The motive as a whole is, therefore, a primary element that contributes
2 heavily to the overall construction of the song.

3 26. In 2010, Burnett began working with producer Rob Freeman – former
4 guitarist of Hidden in Plain View. Together, they created *The Takeover* EP, which
5 included Love Song as the third track. Freeman assisted with the musical
6 composition and arrangement of the Infringed Song around Burnett's original and
7 unique vocal Original Motif. Burnett began circulating initial versions (or
8 “demos”) of Love Song in early February of 2010. *The Takeover* was released on
9 April 6, 2010.

10 27. *The Takeover*, including Love Song, is registered with the United
11 States Copyright Office (SR0000664830) with a registration date of October 19,
12 2010. Burnett and Freeman are both identified as authors on the copyright
13 registration. Freeman has assigned any rights he may have had in Love Song,
14 including copyrights, to Burnett.

15 28. From the dates of creation of Love Song and *The Takeover*, through
16 the date of their registration, Burnett has complied in all respects with the
17 Copyright Act of 1976 and all other laws governing copyright with respect to Love
18 Song and *The Takeover*.

19 29. The recording of Love Song in the album *The Takeover* has been
20 distributed and sold through record stores, internet online sites (including
21 Rhapsody, Amazon.com, and iTunes in the United States, Canada, Australia/New
22 Zealand, U.K./European Union, Japan, Mexico, Latin America (including Brazil))
23 and other outlets, has been played on radio and television, and has been performed
24 at live events and concerts, throughout the United States and in the Central District
25 of California. In addition, *The Takeover* was available for sale in select Hot Topic
26 stores nationwide and has been played on the stores' overhead stereo system, via a
27 company called PlayNetwork. Various fan-posted videos of Love Song have been
28 viewed on YouTube.

1 30. In early 2009, Burnett licensed her songs to MTV Networks, a division
2 of Viacom International, Inc. (“MTV”), for use in MTV’s programming. Several of
3 her songs were featured on seasons two and three of MTV’s hit show *Jersey Shore*.
4 Burnett is also the voice and co-writer behind the theme song for MTV’s live, half
5 hour show *The Seven*, which debuted in 2010.

6 31. In early 2010, Burnett licensed her upcoming album *The Takeover*,
7 including Love Song, to MTV. Love Song, along with other songs by Burnett,
8 were featured on MTV’s hit shows *The Hills* and *Friendzone*, which were first aired
9 in 2010 and replayed throughout 2010 to the present.

10 32. An excerpt from Love Song is featured in Episode 8 of Season 6 of
11 *The Hills*, which originally aired on June 15, 2010. After a commercial break, the
12 show returns to a jovial street scene showing what appears to be dancing to Love
13 Song. This scene begins approximately twelve to thirteen minutes into the episode.
14 The featured excerpt from Love Song is predominated by repetitions of the Original
15 Motif. No other part of Love Song is featured in Episode 8 of Season 6 of *The*
16 *Hills*. Episode 8 or Season 6 of *The Hills* is available to view with streaming media
17 and/or is available for purchases through Netflix, iTunes, and Amazon.com.

18 33. Episode 6 of Season 1 of MTV’s *Friendzone*, which originally aired
19 November 8, 2011, also features an excerpt from Love Song. Upon conclusion of
20 the program’s opening credits, the show’s main programming begins with a graphic
21 displaying the names of a potential couple accompanied by the Original Motif
22 playing at a high volume. Love Song continues to play, but slowly decreases in
23 volume, as the show progresses with scenes of the potential couple and spoken
24 dialogue. The Original Motif dominates the non-scripted portion of the segment
25 and is repeated as the dialogue begins. The excerpt of Love Song appears after
26 approximately thirty-nine seconds of Episode 6 of Season 1 of *Friendzone*, and the
27 episode is available to view via streaming media on mtv.com.

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34. One or more defendants had access to Love Song as early as February 2010, and extensively by early 2011.

35. Defendants' extensive access to Love Song is sufficient to trigger the "inverse ratio rule," whereby a reduced standard of proof of substantial similarity is required when a high degree of access is shown. However, the substantial similarity between the Original Motif and the Copied Motif (defined below) is striking under any standard of proof.

Burnett's Song is Copied by Defendants

36. Upon information and belief, Defendants Adam Young (d/b/a Owl City), Matt Thiessen, and Brian Lee (“the Infringing Songwriters”) wrote the pop hit “Good Time” in December of 2011 (“Good Time” or “the Infringing Song”).

37. Following what appears to be a brief quasi-improvisational figure, Good Time leads with Burnett's Original Motif and repeats the Original Motif, in association with portions of the hook and chorus, twenty-two (22) times throughout the song ("the Copied Motif"). The song concludes with a children's chorus singing the Copied Motif.

38. Additionally, the Copied Motif is used structurally in two primary ways: first, as the first and third measures of a four-measure phrase, which is identical to its use in Love Song, and second, as the first measure in a four-measure, varied repetition of the initial phrase. When this second phrase appears, it is used in conjunction with the first, which creates an eight-measure section similar to that in Love Song.

39. The Infringing Songwriters had access to and copied the Original Motif from Burnett's Love Song. The melodic and vocal expression found in the third complete measure of Good Time, repeated twenty-two (22) times throughout the Infringing Song, is substantially and strikingly similar to Love Song's Original Motif.

11

1 40. The Original Motif is a vocal line of five pitches over four beats,
 2 which appears for the first time in measure one of Love Song. From a
 3 musicological standpoint, the Original Motif's pitches, which correspond to the
 4 scale degrees 5-3-5-3-2, within Love Song's key of F are textless. There are no
 5 formal lyrics, and Burnett vocalizes using "Oh" syllables throughout. The Original
 6 Motif is primary in the overall construction of the song. The Original Motif's
 7 rhythm is expressed as an eighth note rest, four eighth notes, an eighth note rest and
 8 a quarter notes over four beats. The combination of pitches, rhythm, timbre,
 9 context, and lyric demonstrates the originality and creativity of the Original Motif.

10 41. The Copied Motif is a vocal line of five notes over four beats, which
 11 appears for the first time in measure three of Good Time and is nearly identical to
 12 the Original Motif. From a musicological standpoint, the Copied Motif's pitches,
 13 which correspond to the scale degrees 5-3-5-3-2 within Good Time's key of E \flat
 14 are similarly textless, lacking formal lyrics. The Copied Motif is one of two
 15 primary motifs on which Good Time is based and anchors the primary textual
 16 motif. The Copied Motif's rhythm is expressed as an eighth note rest, three eighth
 17 notes, and two quarter notes over four beats in the transcription authorized by
 18 Defendant Universal. However, the expression of the Copied Motif as performed
 19 by Defendant does not correspond to the rhythm as transcribed. If transcribed to
 20 reflect the shortness of the fourth note of the sequence as performed, and the
 21 ensuing gap between that note and the fifth, the rhythm would look either identical
 22 or virtually identical to that in Love Song, after accounting for the natural and slight
 23 inaccuracies of human performance.

24 42. The Copied Motif has identical pitch content and sequence (5-3-5-3-
 25 2), identical melodic contour (the voice moves down, up, down, down), identical
 26 intervallic content (down a minor 3rd-up a minor 3rd-down a minor 3rd-down a
 27 major 2nd), identical rhythmic construction (8th rest, 8th note, 8th note, 8th note,
 28 8th note, 8th rest, quarter note), identical rhythmic context (beginning on the down

1 beat of a 4/4 measure), and identical timbre (textless vocals) to the Original Motif.
 2 The similarities of pitch content and sequence, melodic contour, intervallic content,
 3 rhythmic construction, rhythmic context, and timbre demonstrate that the Copied
 4 Motif could not have been produced independently from the Original Motif.

5 43. The substantial and striking similarity between the Original Motif and
 6 the Copied Motif is amplified by the contextually similar placement and use of the
 7 motifs, as both are identically used in the 1st and 3rd measure of a four-measure
 8 phrase that opens the song and figures prominently as a “hook.” Furthermore,
 9 structural similarities exist between the measures following both the Original Motif
 10 and the Copied Motif.

11 **The Infringing Song is widely published and exploited by Defendants**

12 44. Good Time was recorded by Owl City and Canadian artist Carly Rae
 13 Jepsen for Owl City’s upcoming album *The Midsummer Station*. It was released as
 14 the lead single from the album on June 26, 2012, and the album was released on
 15 August 21, 2012. Good Time also appeared on Carly Rae Jepsen’s second album
 16 *Kiss*, released on September 18, 2012. As of the filing of this complaint, the single
 17 Good Time has been certified platinum by the Recording Industry Association of
 18 America, selling more than 1 million copies worldwide. As of the filing of this
 19 complaint, Good Time has reached number 8 on both “Billboard Hot 100” and
 20 “Billboard Radio Songs” charts as well as number 6 on the “Billboard Pop Songs”
 21 chart. As of the filing of this complaint, the album *The Midsummer Station* has
 22 reached number 7 on the “Billboard 200” chart. As of the filing of this complaint,
 23 the album *Kiss* has reached number 6 on the “Billboard 200” chart. As of the filing
 24 of this complaint, the official video for Good Time had been viewed over 38
 25 million times on YouTube. Indeed, various covers of Good Time by amateur artists
 26 have been viewed over 14 million times on YouTube.

27 45. Good Time, particularly the Copied Motif, has been marketed and
 28 received as the “summer anthem” for 2012. Short clips of Good Time featuring the

1 Copied Motif were played repeatedly during the 2012 Summer Olympics broadcast
 2 by NBC. The Copied Motif has also been used repeatedly in commercials for
 3 Season 5 of the hit television show *90210*, and in NBC's commercials promoting
 4 both Season 5 of the television show *Parks and Recreation* and Season 9 of *The*
 5 *Office*, and separately in commercials promoting solely Season 9 of *The Office*, and
 6 in trailer advertisements for the recently released movie *Hotel Transylvania*.

7 46. Burnett received no credit or attribution for the composition of Good
 8 Time.

9 47. Many consumers of pop music are likely to be confused by the striking
 10 and substantial similarity between the Original Motif and the Copied Motif.

11 48. Unfortunately, many consumers may incorrectly assume that Burnett
 12 copied her own Original Motif from the Infringing Songwriters due to the
 13 widespread popularity and publication of Good Time. Burnett's reputation as an
 14 independent artist will be significantly damaged by such incorrect assumptions.

15 49. Burnett has also suffered emotional and psychological damage from
 16 uninformed fans asking her "Why did you copy that Owl City/Carly Rae Jepsen
 17 song?" Love Song has forever been destroyed as an asset in Burnett's portfolio of
 18 authentic pop songs due to Defendants' infringement because it will always "sound
 19 like Good Time" to pop music critics and consumers – despite the fact that Burnett
 20 wrote and copyrighted the Original Motif.

21 50. Defendants Young and Jepsen have copied, recorded, distributed, and
 22 performed, and/or intend to copy, record, distribute, and perform the infringing
 23 work Good Time to worldwide audiences and consumers.

24 51. Defendants Universal, Songs, and Schoolboy have copied and
 25 distributed, and/or intend to copy and distribute, the infringing work Good Time to
 26 worldwide audiences and consumers.

27 //

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IV.

CLAIMS FOR RELIEF

COUNT I: COPYRIGHT INFRINGEMENT

**(Against Defendants Adam Young d/b/a Owl City, Matt Thiessen, Brian Lee,
Universal Music Group Inc., Songs Music Publishing, LLC, Carly Rae Jepsen,
and Schoolboy Records, Inc.)**

52. Plaintiff incorporates by reference all previous allegations as if fully set forth herein.

53. Burnett is, and at all times material hereto was, the owner of the copyright in Love Song, and is entitled and authorized to protect it against copyright infringement, including the enforcement of copyright actions. Love Song is an original work of authorship and is fixed in a tangible medium of expression.

54. Burnett secured exclusive rights under 17 U.S.C. § 106, to “reproduce the copyrighted work in copies or phonorecords,” “to prepare derivative works based upon the copyrighted work,” and to “perform the copyrighted work publicly.”

55. On information and belief, the Infringing Songwriters each contributed to the creation of the musical composition *Good Time*, performed by Young and Jepsen, and appearing on the albums *Kiss* and *The Midsummer Station*.

56. On information and belief, the Infringing Songwriters had access to, and copied and incorporated into the Copied Motif in Good Time, original portions of Burnett's Love Song, namely the Original Motif.

57. There is a substantial similarity between the Original Motif in Love Song and the Copied Motif in Good Time due to the copying of the Infringed Song by the Infringing Songwriters.

58. On information and belief, Defendants Young and Jepsen recorded Good Time for their respective albums, and have performed, and continue to perform, Good Time at concerts, on television and radio, and at other events.

59. On information and belief, Defendants Universal, Songs, and School

1 Boy participated in and contributed to the exploitation of Good Time in the United
2 States through sales of compact discs, digital downloads, radio and television
3 airplay, and otherwise.

4 60. On information and belief, Defendants have earned, and will continue
5 to earn, substantial sums through their exploitation of Good Time. They continue
6 to actively exploit Good Time, particularly the Copied Motif, worldwide.

7 61. Defendants never sought nor obtained Burnett's permission to copy,
8 duplicate, perform, or otherwise use Burnett's Love Song or her Original Motif.
9 Plaintiff has never granted Defendants authorization to copy, record, publish,
10 perform, or make derivative works of Plaintiff's copyrighted Love Song.

11 62. Defendants' copying, duplication, use, performance, and exploitation
12 of the Copied Motif in Good Time constitute infringement of Burnett's copyright in
13 Love Song.

14 63. Defendants' infringing acts were willful, deliberate, and committed
15 with prior notice and knowledge of Burnett's copyright. Each Defendant willfully,
16 wantonly, and in conscious disregard and intentional indifference to the rights of
17 Plaintiff made and distributed in the United States, caused to be made and
18 distributed in the United States, and aided, abetted, contributed to, and participated
19 in the unauthorized making and distribution of phonorecords containing the
20 copyrighted work owned by Plaintiff. Each Defendant either knew, or should have
21 reasonably known, that Love Song was protected by copyright. Each Defendant
22 continues to infringe upon Plaintiff's rights in and to the copyrighted work.

23 64. As a direct and proximate result of their wrongful conduct, Defendants
24 have realized and continue to realize profits and other benefits rightfully belonging
25 to Plaintiff. Accordingly, Plaintiff seeks an award of damages pursuant to 17
26 U.S.C. § 504.

27 65. Burnett suffered, and will continue to suffer, substantial damage to her
28 professional reputation and goodwill, as well as losses in an amount to be

1 determined at trial.

2 66. In addition to Burnett's actual damages, she is entitled to receive the
3 profits made by the Defendants from their wrongful acts, pursuant to
4 17 U.S.C. § 504(b). Each Defendant should be required to account for all gains,
5 profits, and advantages derived by each Defendant from their acts of infringement.

6 67. In the alternative, Burnett is entitled to, and may elect to choose
7 statutory damages pursuant to 17 U.S.C. § 504(c), which should be enhanced by
8 17 U.S.C. § 504(c)(2) because of Defendants' willful copyright infringement.

9 68. Burnett is entitled to, and may elect to choose injunctive relief under
10 17 U.S.C. § 502, enjoining any use or exploitation by Defendants of their infringing
11 composition and all sound recordings of Good Time and to an order under
12 17 U.S.C. § 503 that any of Defendants' infringing products be impounded and
13 destroyed.

14 69. Burnett does not have an adequate remedy at law for Defendants'
15 wrongful conduct in that (i) Burnett's copyright is unique and valuable; (ii) the
16 infringement by Defendants constitutes continuing damage to Burnett's good will
17 and professional reputation; and (iii) Defendants' wrongful conduct, and the
18 damages resulting to Burnett therefrom constitutes continuing copyright
19 infringement and irreparable injury. Defendants' infringing conduct is continuing
20 and ongoing. Plaintiff has suffered, and will continue to suffer, irreparable injury
21 for which there is no adequate remedy at law, unless Defendants are enjoined by the
22 Court. Therefore, Plaintiff prays that each Defendant, their respective agents,
23 servants, employees, officers, attorneys, successors and assigns, and all of these
24 persons actively in concert or participation with each or any of them, be
25 preliminarily and permanently enjoined from directly or indirectly infringing upon
26 the copyright owned by Plaintiff in any manner, and from duplicating, causing to be
27 duplicated or aiding, contributing to, or participating in the unauthorized
28 duplication of each said copyrighted work. Plaintiff asks that all infringing works

be recalled and destroyed.

70. Burnett is also entitled to recover her reasonable attorneys' fees and costs of suit pursuant to 17 U.S.C. § 505.

71. Each Defendant should pay to Plaintiff an award of prejudgment interest according to the proof.

72. The Defendants by their conduct are jointly and severally liable for their violation of Burnett's copyrights.

**COUNT II: DEMAND FOR CONSTRUCTIVE TRUST OR
INTERPLEADER**

**(Against Defendants American Society of Composers, Authors and Publishers,
Broadcast Music, Inc., and SESAC, Inc.)**

73. Plaintiff incorporates by reference all previous allegations as if fully set forth herein.

74. Plaintiff is entitled to a constructive trust over all profits and royalties collected and held by the Royalty Distributors. Alternatively, the Royalty Distributors should be required to interplead all profits and royalties collected and held by them into the registry of this Court.

75. The Court has jurisdiction over this Demand for Interpleader pursuant to 28 U.S.C. § 1335. The Royalty Distributors have obligations to distribute royalties with a value in excess of \$500 to their members and licensors, and minimal diversity exists between at least two of the claimants.

76. In addition, this Court has jurisdiction over this Demand for Interpleader pursuant to Federal Rule of Civil Procedure Rule 22. Federal question jurisdiction exists over this Demand for Interpleader because the underlying dispute as to the royalties the Royalty Distributors collect and distribute arises under the federal copyright statute, 17 U.S.C. § 101, *et seq.*

77. Multiple claims exist to royalties for the song Good Time as detailed herein (ASCAP Work ID: 884124494, BMI Work #: 14225487) ("the Disputed

1 Work").

2 78. Specifically, Plaintiff Burnett and the Infringing Songwriters and other
3 Defendants claim an entitlement to royalties for the Disputed Work.

4 79. The Royalty Distributors have no interest in, or information about, the
5 relative merits or priorities of the conflicting claims to royalties attributable to
6 public performance or exploitation (including but not limited to radio, television,
7 internet, and live performances) of any of the other rights in the Disputed Works;
8 rather, the Royalty Distributors are mere stakeholders only as to such public
9 performance royalties, and are not otherwise necessary parties to this action.

10 80. As stakeholders, the Royalty Distributors have control over the
11 royalties to the Disputed Work to be interpleaded. Further, the Royalty Distributors
12 are free from fault over the controversy surrounding the entitlement to royalties to
13 the Disputed Work.

14 81. Pending the Court's determination as to whether Plaintiff or
15 Defendants are entitled to receive royalties for public performances of the Disputed
16 Work, the Royalty Distributors should be ordered to tender to the Clerk of this
17 Court for deposit in the registry of this Court any and all future sums representing
18 the entire amount of royalties being held for by the Royalty Distributors for public
19 performances of the Disputed Work as set forth above.

20 82. The Court should further order that the Royalty Distributors are
21 discharged from further liability and from further participation in this action other
22 than to deposit all current and future domestic and foreign royalties that have
23 accrued, and that may accrue to the accounts of the Defendants with interests in the
24 Disputed Works, for public performances of such works, pending final resolution of
25 this matter and entry of an order of this Court directing the distribution of all such
26 royalties.

27 //

28 //

PRAAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, as follows:

On the First Claim for Relief

1. For attorneys' fees and costs per statute;
 2. For a constructive trust;
 3. For disgorgement of profits;
 4. For actual, compensatory, and statutory damages;
 5. For pre-judgment interest;
 6. For preliminary and permanent injunctive relief;

On the Second Claim for Relief

7. For an order directing the Royalty Distributors to interplead funds;
 8. For a constructive trust;

On All Claims for Relief

9. For such other, further, and different legal and equitable relief as the Court deems proper under the circumstances.

DATED: October 25, 2012

JOHNSON & JOHNSON LLP

By

Neville L. Johnson
Douglas L. Johnson
James T. Ryan

GRAHAM & PENMAN, LLP
Jason W. Graham
Raegan M. King

Attorneys for Plaintiff,
ALLYSON NICHOLE BURNETT

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury pursuant to the Federal Rules of Civil Procedure, Rule 38(b) (28 U.S.C. § 38), and Local Rule 38-1.

DATED: October 25, 2012

JOHNSON & JOHNSON LLP

By

Neville L. Johnson
Douglas L. Johnson
James T. Ryan

GRAHAM & PENMAN, LLP
Jason W. Graham
Raegan M. King

Attorneys for Plaintiff,
ALLYSON NICHOLE BURNETT

EXHIBIT 1

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, *United States Code*, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Acting Register of Copyrights, United States of America

Registration Number
SR 664-830

Effective date of
registration:
October 19, 2010

Title

Title of Work: The Takeover

Contents Titles: Runaway

The Deep End

AH, It's a Love Song

Let Go

My Way

Completion/Publication

Year of Completion: 2010

Date of 1st Publication: April 6, 2010

Nation of 1st Publication: United States

Author

Author: Allyson Nichole Burnett

Pseudonym: Ally Cupcake, Ally Burnett

Author Created: sound recording, performance, music, lyrics

Work made for hire: No

Citizen of: United States

Domiciled in: United States

Year Born: 1986

Pseudonymous: Yes

Author: Robert Andrew Freeman

Author Created: sound recording, production, music, lyrics

Citizen of: United States

Domiciled in: United States

Copyright claimant

Copyright Claimant: Allyson Nichole Burnett

129 Day Dr., Brownsboro, AL, 35741

Rights and Permissions

Exhibit 1

Name & Address: JOHNSON & JOHNSON LLP
 Neville L. Johnson (SBN 66329)
 439 North Canon Drive, Suite 200
 Beverly Hills, California 90210
 Telephone: (310) 975-1080
 Email: njohnson@jllplaw.com

UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA

<p>Allyson Nichole Burnett</p> <p style="text-align: center;">v.</p> <p>Adam Young d/b/a Owl City; Matt Thiessen, Brian Lee; Universal Music Group Inc.; Songs Music Publishing, LLC; Carly Rae Jepsen; Schoolboy Records, Inc.; American Society of Composers, Authors and Publishers; Broadcast Music, Inc.; and SESAC, Inc.</p>	<p>PLAINTIFF(S)</p> <p>DEFENDANT(S).</p> <p>CASE NUMBER</p> <p>CV12-09203</p> <p>DSF (VBKx)</p> <p>SUMMONS</p>
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TO: DEFENDANT(S): Adam Young d/b/a Owl City

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Neville L. Johnson, whose address is 439 North Canon Drive, Suite 200, Beverly Hills, California 90210. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

OCT 25 2012

Dated: _____

Clerk, U.S. District Court

By: _____

JULIE PRADO

Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3).]

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Dale S. Fischer and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

CV12- 9203 DSF (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself

Allyson Nichole Burnett

DEFENDANTS

Adam Young d/b/a Owl City, Matt Thiessen, Brian Lee, Universal Music Group, Inc., Songs Music Publishing, LLC, Carly Rae Jepsen, Schoolboy Records, LLC, ASCAP, BMI, SESAC, Inc.

(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
 Johnson & Johnson LLP, 439 North Canon Drive, Suite 200
 Beverly Hills, CA 90210
 (310) 975-1080

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an X in one box only.)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
(Place an X in one box for plaintiff and one for defendant.)

Citizen of This State

PTF DEF

 1 1 Incorporated or Principal Place of Business in this State

PTF DEF

 4 4

Citizen of Another State

PTF DEF

 2 2 Incorporated and Principal Place of Business in Another State 5 5

Citizen or Subject of a Foreign Country

PTF DEF

 3 3 Foreign Nation 6 6**IV. ORIGIN** (Place an X in one box only.)

1 Original 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify): 6 Multi-District Litigation 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)CLASS ACTION under F.R.C.P. 23: Yes No MONEY DEMANDED IN COMPLAINT: \$ TBD**VI. CAUSE OF ACTION** (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
17 USC sec. 101, et seq.: Copyright Infringement; 28 USC sec. 1335: Interpleader or Constructive Trust**VII. NATURE OF SUIT** (Place an X in one box only.)**OTHER STATUTES**

- 400 State Reapportionment
- 410 Antitrust
- 430 Banks and Banking
- 450 Commerce/ICC Rates/etc.
- 460 Deportation
- 470 Racketeer Influenced and Corrupt Organizations
- 480 Consumer Credit
- 490 Cable/Sat TV
- 810 Selective Service
- 850 Securities/Commodities/ Exchange
- 875 Customer Challenge 12 USC 3410
- 890 Other Statutory Actions
- 891 Agricultural Act
- 892 Economic Stabilization Act
- 893 Environmental Matters
- 894 Energy Allocation Act
- 895 Freedom of Info. Act
- 900 Appeal of Fee Determination Under Equal Access to Justice
- 950 Constitutionality of State Statutes

CONTRACT

- 110 Insurance
- 120 Marine
- 130 Miller Act
- 140 Negotiable Instrument
- 150 Recovery of Overpayment & Enforcement of Judgment
- 151 Medicare Act
- 152 Recovery of Defaulted Student Loan (Excl. Veterans)
- 153 Recovery of Overpayment of Veteran's Benefits
- 160 Stockholders' Suits
- 190 Other Contract
- 195 Contract Product Liability
- 196 Franchise

REAL PROPERTY

- 210 Land Condemnation
- 220 Foreclosure
- 230 Rent Lease & Ejectment
- 240 Torts to Land
- 245 Tort Product Liability
- 290 All Other Real Property

TORTS

- PERSONAL INJURY**
- 310 Airplane
- 315 Airplane Product Liability
- 320 Assault, Libel & Slander
- 330 Fed. Employers' Liability
- 340 Marine
- 345 Marine Product Liability
- 350 Motor Vehicle
- 355 Motor Vehicle Product Liability
- 360 Other Personal Injury
- 362 Personal Injury-Med Malpractice
- 365 Personal Injury-Product Liability
- 368 Asbestos Personal Injury Product Liability

- IMMIGRATION**
- 462 Naturalization Application
- 463 Habeas Corpus-Alien Detainee
- 465 Other Immigration Actions

TORTS

- PERSONAL PROPERTY**
- 370 Other Fraud
- 371 Truth in Lending
- 380 Other Personal Property Damage
- 385 Property Damage Product Liability
- BANKRUPTCY**
- 422 Appeal 28 USC 158
- 423 Withdrawal 28 USC 157
- CIVIL RIGHTS**
- 441 Voting
- 442 Employment
- 443 Housing/Accommodations
- 444 Welfare
- 445 American with Disabilities - Employment
- 446 American with Disabilities - Other
- 440 Other Civil Rights

PRISONER PETITIONS

- 510 Motions to Vacate Sentence
- 511 Habeas Corpus
- 530 General
- 535 Death Penalty
- 540 Mandamus/Other
- 550 Civil Rights
- 555 Prison Condition
- FORFEITURE/PENALTY**
- 610 Agriculture
- 620 Other Food & Drug
- 625 Drug Related Seizure of Property
- 630 Liquor Laws
- 640 R.R. & Truck
- 650 Airline Regs
- 660 Occupational Safety /Health
- 690 Other

LABOR

- 710 Fair Labor Standards Act
- 720 Labor/Mgmt. Relations
- 730 Labor/Mgmt. Reporting & Disclosure Act
- 740 Railway Labor Act
- 790 Other Labor Litigation
- 791 Empl. Ret. Inc. Security Act
- PROPERTY RIGHTS**
- 820 Copyrights
- 830 Patent
- 840 Trademark
- SOCIAL SECURITY**
- 861 HIA (1395ff)
- 862 Black Lung (923)
- 863 DIWC/DIWW (405(g))
- 864 SSID Title XVI
- 865 RSI (405(g))
- FEDERAL TAX SUITS**
- 870 Taxes (U.S. Plaintiff or Defendant)
- 871 IRS-Third Party 26 USC 7609

CV12-09203

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
 If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
 If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District.*	California County outside of this District; State, if other than California; or Foreign Country
	Alabama

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District.*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	Sacramento County, Minnesota, Tennessee, Delaware, New York, Canada

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District.*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): _____ Date 10/25/2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))